

U.S. Patent Application No. 09/536,351  
Second Supplemental Amendment After Final dated June 14, 2004  
Reply to final Office Action dated September 2, 2003

**REMARKS/ARGUMENTS**

Reconsideration and continued examination of the above-identified application are respectfully requested.

The amendments to the claims are editorial in nature and/or further define what the applicants regard as their invention. Full support for the amendment can be found throughout the present application, including the claims as originally filed. Support for the phrase "free of organics" can be found at page 4, lines 25-26 and at page 7, lines 31-33, and support for the azadirachtin amount being based on the weight of the formulation can be found at page 6, lines 8-16 of the present application. The applicants are also incorporating the language of dependent claims 10, 11, and 12 into independent claim 3 and amending claim 14 to recite the language recommended by the Examiner. Therefore, no new questions of patentability should arise nor does the amendment necessitate any further searching on the part of the Examiner since the Examiner has essentially considered similar subject matter previously. The amendment places the application in condition for allowance. At a minimum, the amendment places the application in a better condition for appeal. Accordingly, no questions of new matter should arise and entry of the amendment is respectfully requested.

The previous Amendment After Final dated December 2, 2003 was not entered by the Examiner. By way of the present Amendment, claims 3, 5, 8, 9, 14-16, and 23 are pending in the application. In the Advisory Action dated February 25, 2004, claim 14 was indicated as allowable and claim 3, with the addition of the subject matter of claims 10-12 would be allowable.

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In response to the Supplemental Amendment After Final filed March 26, 2004, the Examiner issued an Advisory Action dated April 14, 2004, wherein the Examiner refused to enter the amendment. The Examiner wanted to know the precise location for support to the phrase "free of organics."

In addition, contrary to the Examiner's statements set forth in the Advisory Action dated February 25, 2004, the Examiner did not allow the pending claims. In the Advisory Action dated February 25, 2004, the Examiner specifically stated that certain claims would be allowable if several claims were merged together which was done. In addition, the Examiner indicated that claim 14 would be allowable. At this point, the applicants and the undersigned are confused by the Examiner's contradictory statements as set forth in the previous Advisory Action dated February 25, 2004, and the most recent Advisory Action dated April 14, 2004. Clarification is respectfully requested. At this point, the claims are in condition for allowance.

At page 2 of the Office Action, the Examiner rejected claims 1, 9, and 17-19 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that the applicants regard as the invention. The Examiner states that, with respect to claims 2 and 17-19, a definition or quantification of the term "substantially free of organic solvents" is not disclosed and therefore the metes and bounds of the claimed invention are undeterminable. The Examiner also states that claims 17 and 19 do not further limit claim 14. For the following reasons, the rejection is respectfully traversed.

Support for the term "free of organics" can be found at page 4, lines 25-26 and at page 7, lines 31-33.

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We note that at page 2, lines 4-6 of the Office Action, the Examiner rejects claims 1, 9, and 17-19. However, the Examiner, at page 2, line 7 of the Office Action, also rejects claim 2 for reciting the term "substantially." We believe that the Examiner's rejection of claim 2 under 35 U.S.C. § 112, second paragraph, is a typographical error and the reference to claim 2 should read "claim 1."

With respect to claims 1, 17, 18, and 19, the applicants have cancelled these claims. Accordingly, the rejection of claims 1, 17, 18, and 19 is moot. Further, claim 9 does not use the term. The rejection should be withdrawn in view of the above and previous comments offered in the un-entered Amendment filed December 2, 2003.

Accordingly, the rejection under 35 U.S.C. § 112, second paragraph, should be withdrawn.

At page 2 of the Office Action, the Examiner rejects claims 1 and 14 under 35 U.S.C. § 102(b), as being anticipated by Carter et al. (U.S. Patent No. 5,124,349). The Examiner states that the rejection of record is maintained. The Examiner states that no water is specified in Carter et al. The Examiner further points out that Carter et al., at col. 3, lines 53-63, states that less than one percent by weight of water is present. The Examiner also states that a low percentage by weight of water is shown in Carter et al., in tables II, IV, and V. Also, the Examiner argues that neem oil is a vegetable oil. For the following reasons, this rejection is respectfully traversed.

With respect to claim 1, this claim is cancelled. Therefore, the rejection of claim 1 over Carter et al. is moot.

With respect to claim 14, in the Advisory Action dated February 25, 2004, the Examiner indicates that the proposed/amended claim 14 would be allowable if submitted in a separate and

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timely filed amendment. In order to place claim 14 in condition for allowance, the applicants have complied with the Examiner's suggestion. Accordingly, this rejection should be withdrawn.

At page 3 of the Office Action, the Examiner rejects claims 1 and 14-16 under 35 U.S.C. § 103(a) as being unpatentable over Dimetry et al. and Carter et al. The Examiner states that the rejection of record is maintained and that, although Applicants argue that Dimetry et al. discloses water, both references use Neem oil with Azadirachtinas pesticidal composition and that Carter et al. shows the removal of water to increase stability. For the following reasons, this rejection is respectfully traversed.

As stated earlier, claim 1 has been cancelled. Therefore, the rejection of claim 1 is moot. Additionally, with respect to claim 14, as stated earlier, in an Advisory Action dated February 25, 2004, the Examiner indicates that proposed claim 14 would be allowable if submitted in a separate and timely filed amendment. As stated above, to place claim 14 in condition for allowance, the applicants have complied with the Examiner's suggestion. Therefore, claim 14 is in condition for allowance. Claims 15 and 16 are dependent directly or indirectly on claim 14. Therefore, the reasons set forth above with respect to the patentability of claim 14 would apply equally here. Accordingly, this rejection should be withdrawn.

At page 3 of the Office Action, the Examiner rejects claims 1-3, 6-9, 14, 17, and 19 under 35 U.S.C. § 102(b) as being anticipated by Blum et al. (U.S. Patent No. 5,885,600). The Examiner states that Blum et al., at col. 3, line 9 - col. 4, line 4, shows cold extraction of Neem oil to provide solvent free Azadirachtins, along with vegetable oil, citronellas, and cedar wood. The Examiner states that Blum et al., at col. 4, lines 5-15, shows that temperature, humidity, and pH can affect

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stability and are maintained under nitrogen. The Examiner states that according to Blum et al., at col. 4, lines 42-55, non-ionic surfactants are added to permit later dilution as emulsions. The Examiner further notes that examples in Blum et al., in Formulae B and C, and claims 8, 11, and 12, show no water and no organic solvent. The Examiner notes that how the formulations act is not seen as having any patentable weight. For the following reasons, this rejection is respectfully traversed.

With respect to claims 1, 2, 6, 7, 17, and 19, these claims have been cancelled. Accordingly, the rejection over these claims is moot.

With respect to claim 3, in the Advisory Action dated February 25, 2004, the Examiner indicates that claim 3 would be allowable if the applicants incorporate the limitations recited in claims 10, 11, and 12 into claim 3. To place the claimed invention in condition for allowance, claim 3 now includes the limitations recited in claims 10, 11, and 12. Therefore, claim 3 is in condition for allowance. Claims 8 and 9 are dependent directly on claim 3. Therefore, the reasons set forth above with respect to the patentability of claim 3 would apply equally to these claims.

With respect to claim 14, as indicated above, in the Advisory Action dated February 25, 2004, the Examiner indicates that the proposed claim 14 would be allowable if submitted in a separate and timely filed amendment. Claim 14 complies with the Examiner's suggestion. Therefore, claim 14 is now in condition for allowance. Accordingly, this rejection should be withdrawn.

At page 4 of the Office Action, the Examiner rejects claims 1-4, 6-12, 14-19, 23, and 24 under 35 U.S.C. § 103(a) as being unpatentable over Blum et al. and Dimetry et al. in view of

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Butler et al. (U.S. Patent No. 5,352,697). The Examiner states that Blum et al. describes the claimed compositions and similar formulations. According to the Examiner, Blum et al. describes sufficient amounts and concentrations of active components of insect control compositions of natural ingredients, such as Neem tree leaf, bark, and seed extracts.

The Examiner states that Butler et al., at col. 5, lines 14-30, describes the particular surfactant, inclusive of triglycerides and ethoxylated sorbitan, when preparing Azadirachtin derivatives, as seen in Example 10. The Examiner states that Dimetry et al., at page 396, shows that sesame oil enhances the insecticidal activity of Neem seed extracts.

The Examiner states that the applicants have not clearly established that the claimed active ingredient, carrier, or extract provides any new or unexpected results. For the following reasons, the rejection is respectfully traversed.

With respect to claims 1, 2, 4, 6, 7, 10, 11, 12, 17, 18, 19, and 24, these claims have been cancelled. Therefore, the rejection of these claims is moot.

With respect to claim 3, as stated above, in the Advisory Action dated February 25, 2004, the Examiner indicates that claim 3 would be allowable if rewritten to include the limitations of claims 10, 11, and 12. The applicants have incorporated the language of claims 10, 11, and 12 into claim 3. Therefore, claim 3 is in condition for allowance. Claims 8, 9, and 23 are dependent directly on claim 3. Therefore, the reasons set forth above with respect to the patentability of claim 3 would apply equally to these claims.

With respect to claim 14, as stated above, in the Advisory Action dated February 25, 2004, the Examiner indicates that the proposed claim 14 would be allowable if submitted in a separate

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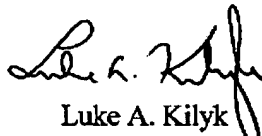
and timely filed amendment. Claim 14 now complies with the Examiner's suggestion. Therefore, claim 14 is in condition for allowance. Claims 15 and 16 are dependent directly or indirectly on claim 14. Therefore, the reasons set forth above with respect to the patentability of claim 14 would apply equally to these claims. Accordingly, this rejection should be withdrawn.

### CONCLUSION

In view of the foregoing remarks, the applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

If there are any other fees due in connection with the filing of this response, please charge the fees to Deposit Account No. 50-0925. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and should also be charged to said Deposit Account.

Respectfully submitted,



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